1980

Salt Lake City v. Michael Johnson : Brief of Respondent

Utah Supreme Court

BRIAN M. BARNARD; Attorney for Defendant-Appellants;ROGER CUTLER, PAUL G. MAUGHAN; Attorneys for Plaintiff-Respondent

IN THE SUPREME COURT

OF THE STATE OF UTAH

SALT LAKE CITY CORPORATION,	)	
	)	
Plaintiff-Respondent,	)	Case No. 16840
	)	
vs.	)	
	)	
MICHAEL JOHNSON,	)	
	)	
Defendant-Appellant.	)	

BRIEF OF RESPONDENT

AN APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY
THE HONORABLE BRYANT CROFT, JUDGE PRESIDING

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TABLE OF CONTENTS

CASES CITED

STATUTES CITED

IN THE SUPREME COURT

OF THE STATE OF UTAH

SALT LAKE CITY CORPORATION, Plaintiff-Respondent, vs. MICHAEL JOHNSON, Defendant-Appellant.	BRIEF Case No. 16840

I.

NATURE OF THE CASE

The defendant-appellant was convicted in the Circuit Court for public intoxication in violation of Section 32-1-4 Revised Ordinances of Salt Lake City, 1965.

II.

DISPOSITION IN LOWER COURT

The appellant-Johnson pleaded guilty in the Circuit Court to the offense of public intoxication and was fined the sum of $15. The Circuit Court denied the appellant-Johnson's Motion to Dismiss and ruled that Section 32-1-4 Revised Ordinances of Salt Lake City, Utah, 1965 as amended, was not unconstitutionally vague. On appeal, the District Court upheld both the conviction of the appellant and the constitutionality of the City's public intoxication ordinance.

III.

RELIEF SOUGHT ON APPEAL

Plaintiff-respondent Salt Lake City seeks to have the conviction of the appellant-Johnson upheld and the ruling of the District Court, that Section 32-1-4 Revised Ordinances of Salt Lake City, Utah, 1965 as amended, is constitutional, affirmed.

IV.

STATEMENT OF THE FACTS

1. On December 26, 1978 the City filed a criminal complaint against the appellant-Johnson in the Circuit Court for being intoxicated in a public place in violation of Section 32-1-4 Revised Ordinances of Salt Lake City, Utah 1965 as amended. (R-4).

2. On January 9, 1979 the appellant-Johnson filed a Motion to Dismiss alleging that said ordinance was unconstitutionally vague. (R-55, 56).

3. The Circuit Court entered an Order on May 3, 1979 denying the appellant-Johnson's Motion and upheld the constitutionality of the ordinance. (R-62).

4. On the 14th day of May 1979 counsel for the appellant, Mr. Brian Barnard, pleaded the appellant-Johnson guilty to the charge of being intoxicated in a public place. (R-3, 6).

5. Thereafter the appellant-Johnson appealed his

conviction to the Third Judicial District Court. After oral argument, submission of evidence and hearing on the matter, the Court upheld the conviction of the appellant-Johnson and the constitutionality of the ordinance. The Court's judgment was entered on the 21st day of December, 1979. (R-9, 10, 49, 50).

6. The appellant-Johnson thereafter filed a Notice of Appeal. (R-50).

7. The appellant has not raised any disputed issues of fact regarding the constitutionality of the City's ordinance as applied. The sole issue raised by the appellant is whether the ordinance is constitutional on its face.

V.

ARGUMENT

POINT I

CITY ORDINANCES ARE PRESUMED TO BE VALID AND IN CONFORMITY WITH THE CONSTITUTION; THE BURDEN OF CHALLENGING THE CONSTITUTIONALITY OF A CITY ORDINANCE LIES ON THE CHALLENGER

The City ordinance in question, Section 32-1-4 of the Revised Ordinances of Salt Lake City, Utah, 1965, provides:

> "Drinking and drunkenness in public places. No persons shall drink liquor in a public building, park or stadium or be in an intoxicated condition in a public place." (See Appendix "A").

The defendant has conceded the constitutionality of the first part of this ordinance that "no person shall drink

liquor in a public building, park or stadium . . ." and contends only that the term "intoxicated condition" is vague and therefore unconstitutional.

It should first be noted that statutes and ordinances are presumed to be constitutional and every reasonable presumption will be afforded to render them valid. It is the burden of the person challenging the statute to prove beyond a reasonable doubt that the law is constitutionally defective, Salt Lake City v. Savage, 541 P.2d 1035 (Utah, 1975) Cert. denied 425 U.S. 915 (1976).

The Utah Supreme Court has addressed the issue as follows:

> "It is well settled in this state, as elsewhere, that the courts will not declare a statute unconstitutional unless it clearly and manifestly violates some provision of the constitution of the United States. Every presumption must be indulged in favor of the constitutionality of an act, and every reasonable doubt resolved in favor of its validity. (citations omitted) The whole burden lies on him who denies the constitutionality of a legislative enactment." State v. Packer, 297 P. 1013, 1016 (Utah, 1931). See also, State v. Packard, 250 P.2d 561 (Utah, 1952). (Emphasis added).

It should also be noted that Section 32-7-13 Utah Code Annotated, (1953) reads verbatim, and is identical, to the City's public intoxication ordinance. Therefore the decision of this Court will affect not only the validity of the subject ordinance, but the state law as well. The

state's public intoxication statute cited above was collaterally upheld and cited with approval by the Utah Supreme Court in State v. Bryan, 395 P.2d 539 (Utah, 1964).

In the case of State v. Packard, supra, the Utah Supreme Court held:

> "It is recognized that statutes should not be declared unconstitutional if there is any reasonable basis upon which they may be sustained as falling within the constitutional framework [citations omitted], and that a statute will not be held void for uncertainty if any sort of sensible, practical effect may be given it." Id. at 563.

The Supreme Court of the United States has repeatedly ruled that:

> "'. . .[T]he Constitution does not require impossible standards'; all that is required is that the language 'conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. . .'" Roth v. United States, 354 U.S. 476, 491 (1956). (Emphasis added).

The United States Supreme Court has held that municipal ordinances and state statutes will only be held unconstitutional if they "fail to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute." United States v. Harris, 347 U.S. 612, 617 (1953), cf. Papachristou v. Jacksonville, 405 U.S. 156 (1972).

In discussing the principles of statutory construction, the Supreme Court in Harris, supra stated:

> "The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.
>
> "On the other hand, if the general class of offenses to which the statute is directed in plainly within its terms, the statute will not be struck down as vague, even though marginal cases could be put where doubt might arise. [citations omitted]. Id at 617, 618.

The Utah Supreme Court has also held:

> "A statute is vague [only] when it fails to inform persons of ordinary intelligence what their conduct must be in order for them to be guilty of a violation thereof." State v. Haig, 578 P.2d 837, 839 (Utah, 1978).

This latter principle of constitutional law has been readily cited by the appellant-Johnson. However, what the appellant has failed to do is point out that public intoxication ordinances and statutes like those in question have been universally upheld by the courts of this country against all constitutional challenges.

In fact, the appellant has failed to cite any specific precedent or direct legal authority whatsoever in support of his argument that the City's public intoxication ordinance should be declared unconstitutional. The defendant has proferred only general principles of law and unsound hypotheticals as authority for his argument and has, thus, failed to sustain the burden of constitutional challenge.

POINT II

SECTION 32-1-4 REVISED ORDINANCES OF SALT LAKE CITY, UTAH 1965, IS CONSTITUTIONAL IN ALL REGARDS AND IS NOT UNCONSTITUTIONALLY VAGUE.

Drunkenness and intoxication in public places are unquestionably matters for municipal regulation. Ordinances dealing with such bear a manifest relationship to the public peace, health, safety and morals of the community, and the cases that so hold are legion. See, Seattle v. Hill, 435 P.2d 692 (Wash., 1967).

Ordinances prohibiting and penalizing public intoxication have been universally sustained against constitutional challenges such as the one being made by the defendant herein. See Quittner v. Thompson, 309 F.Supp. 684 (1970); Goldstein v. Atlanta, 234 S.E.2d 344 (Georgia, 1977); Ex Parte Boza, 106 P.2d 29 (Cal., 1940); Seattle v. Hill, supra; Findlay v. City of Tulsa, 561 P.2d 980 (Okla., 1977).

In Findlay, supra, the Oklahoma Court of Criminal Appeals rejected the same vagueness argument that the appellant herein is raising. The court in rejecting the defendant's argument stated:

> "Only reasonable certainty is required and it is elementary that the prohibited act may be characterized by a general term without definition if that term has a settled and commonly understood meaning which does not leave a person of ordinary intelligence in doubt.

* * *

"The condition of being in a state of intoxication is a matter of general knowledge, the meaning of which is sufficiently 'settled and commonly understood' so that definite and sensible definition may be made of the words of the ordinance in question." Id. at 983, 984. (Emphasis added).

The Court in Findlay held that the terms "intoxicated" and "drunk" were synonymous and stated the commonly accepted meaning of the terms to be:

"A person is drunk in a legal sense when he is so far under the influence of liquor that his passions are visibly excited or his judgment impaired by the liquor . . ." Id. at 688.

The Findlay Court concluded by holding:

"Therefore it is the opinion of this court that since the prohibition against public intoxication is well defined and well within the province of the state or municipality to regulate, the defendant's assertion that the ordinance in question is vague and overbroad is found to be without merit." Id. at 984. (Emphasis added).

In Quittner v. Thompson, supra, the Federal District Court of Florida held the term "drunk or intoxicated" in a municipal ordinance was not vague. After citing the Supreme Court standard to be applied in vagueness challenges the court held:

"This court finds, . . . that the phrase 'drunk or intoxicated' is constitutionally sufficient." Id. at 686. (Emphasis added).

In Ex Parte Boza, 106 P.2d 29 (Cal., 1940) the

California Court of Appeals rejected the vagueness argument presented by the defendant and held:

> "The ordinance does provide a punishment for those who become intoxicated within the meaning of that term in a public place or a place open to public view. We see little merit to petitioner's argument in this respect. The constitutionality of the ordinance is not subject to attack upon the grounds stated [i.e., vagueness]." Id. at 32. (Emphasis added).

The courts have generally held that terms "intoxicated" and "drunk" to be synonymous. Black's Law Dictionary (4th Ed.) citing a wealth of authorities, defines "drunk" as follows:

> "A person is 'drunk' when he is so far under the influence of liquor that his passions are visibly excited or his judgment impaired, or when his brain is so far affected by potations of liquor that his intelligence, sense-perceptions, judgment, continuity of thought or of ideas, speech, and co-ordination of volition with muscular action (or some of these faculties or processes) are impaired or not under normal control. . . . It [drunk] is a synonym of intoxicated." (Emphasis added).

In State v. Painter, 134 S.E.2d 628 (N.C., 1964) the North Carolina Supreme Court defined the terms "drunk" and "intoxicated" as follows:

> "The word 'drunk' is a synonym for the word 'intoxicated.' And a person is 'drunk' or 'intoxicated' when he is so far under the influence of intoxicating liquor that his passions are visibly excited or his judgment materially impaired, or when his brain is so far affected by potations of intoxicating liquor that his intelligence, sense-perceptions, judgment, continuity of thought

> or of ideas, speech and coordination of volition with muscular action, or some of these faculties or processes are materially impaired. In our opinion, this is the definition of 'drunk' or 'intoxicated' recognized 'in common speech, in ordinary experience, and, in judicial decisions.'"

The appellant has erroneously argued that the consumption of alcohol no matter how small or from what source is sufficient to make a person subject to the provisions of the ordinance in question. Such is not the case. Individuals are free to consume alcohol and then appear in public places without fear of arrest as long as they are not intoxicated. It is only when a person has consumed alcohol to the point that he or she becomes so under the influence of alcohol as to be "intoxicated" or "drunk" that a person is subject to the provisions of the City's ordinance.

This same position was adopted by the Court in Quittner v. Thompson, supra:

> "It is clear that the pertinent language of Section 20-10 of the Dania Municipal Code, when measured by common understanding, conveys a sufficient and definite warning as to what conduct is prohibited by its terms; i.e., citizens within the municipality, while free to ingest intoxicating liquors, may not drink to the point where the influence of the liquor deprives them of the possession of their normal facilities." Id. at 686.

The responsibility for making the determination of who is intoxicated is rightfully left to a police officer's judgment, based upon probable cause. A police officer is as

entitled to rely upon his own judgment, experience, and knowledge in determining whether a person should be arrested for being intoxicated in public, as are members of a jury in deciding such a case in a judicial proceeding.

The appellant has proferred several examples as to how the City's ordinance could be amended so as to meet constitutional criteria. In these examples, the appellant allegedly sets forth "objective criteria" which he feels are otherwise lacking in the current City ordinance. Upon examination, however, the proferred guidelines still require a police officer to use his own judgment in determining whether probable cause exists to make an arrest for public intoxication.

A police officer must still make a determination of whether a person is under the influence so as to be "unable to exercise care for his safety or the safety of others" or whether a person is a "danger to himself or a danger to others". Appellant Brief pp. 14, 15. These proffered criteria would still require the same type of judgments based upon the arresting officer's experience, knowledge and view of the circumstances.

The appellant's fears of harrassment by a police officer due to the provisions of the City's public intoxication ordinance are without merit. This Court in upholding the validity of the City's vagrancy ordinance

stated:

> "We are unable to see where any unusual authority is given to police officers or to prosecuting attorneys by this ordinance. In every criminal case a determination must be made as to whether a crime has been committed and whether the evidence is sufficient to obtain a conviction. If those charged with the duty of enforcing the law are not doing their duty, a grand jury can be called. If they are overly zealous in making an arrest of a defendant, the trial jury will so say, and the defendant will then have his civil remedies available to him. These matters apply alike to this ordinance as well as to any other crime." Savage, supra, 1036-1037.

The ordinance in question simply does not allow for official misconduct as did the vagrancy statute which was struck down by the United States Supreme Court and Papachristou v. City of Jacksonville, 405 U.S. 156 (1972). Papachristou is cited by the appellant for the proposition that those who suffer from vague ordinances are the poor, idelers, and dissenters of society.

It is submitted that there has been absolutely no allegation supported in fact or otherwise that the City's public intoxication ordinance is or has been discriminarily enforced against the appellant-Johnson or any other person on any basis whatsoever. The subject ordinance punishes individuals for conduct, not for status, therefore, it is distinguishable from the vagrancy ordinance struck down in Papachristou.

CONCLUSION

It is respectfully submitted for the foregoing reasons that the appellant has failed to sustain his burden of demonstrating the unconstitutionality of the City's public intoxication ordinance. The City maintains that its ordinance is constitutional and virtually identical to the other public intoxication ordinances that have been universally upheld against the same constitutional arguments made by the appellant in the present case. The conviction of the defendant should be upheld and the District Court's decision affirming the constitutionality of the City's ordinance should be affirmed.

DATED this _____ day of April, 1980.

Respectfully submitted,

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APPENDIX "A"

Sec. 32-1-4. Drinking and drunkenness in public places. No person shall drink liquor in a public building, park or stadium or be in an intoxicated condition in a public place.